

MINUTES
TIGARD CITY COUNCIL MEETING
AUGUST 14, 2001

1. BUSINESS MEETING

- 1.1 Call to Order - City Council & Local Contract Review Board
- 1.2 Roll Call - Present: Mayor Griffith, Councilors Dirksen, Moore, Patton and Scheckla.
- 1.3 Pledge of Allegiance
- 1.4 Council Communications & Liaison Reports: None.
- 1.5 Call to Council and Staff for Non-Agenda Items

> Administrative Items

Mayor Griffith noted that the Tigard Central Business District Association was withdrawing their request for a hearing on the formation of an Economic Improvement District (EID) – Business Improvement District (BID).

Community Development Director Hendryx added that it is the intention of the Association to reformulate a plan with regard to efforts in the downtown. Mr. Hendryx advised that more than 33% of the business and property owners remonstrated against formation of the EID and the BID. The list of those who submitted remonstrances will be updated for the public.

2. PUBLIC HEARING – CONSIDER AN ORDINANCE LEVYING ASSESSMENTS AND BUSINESS TAX SURCHARGES FOR THE DOWNTOWN ECONOMIC IMPROVEMENT DISTRICT

No public hearing was conducted.

Mayor Griffith noted that the Tigard Central Business District Association was withdrawing their request for a hearing on the formation of an Economic Improvement District (EID) – Business Improvement District (BID).

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remonstrated against formation of the EID and the BID. The list of those who submitted remonstrances will be updated for the public.

Mr. Tyler Ellenson, President of the Tigard Central Business District, advised that in reviewing the EID/BID remonstrances demographically, most were along Tigard and Burnham Streets. He noted that the downtown community should drive this plan. He said they would still be looking for a funding mechanism, but does not know how they will proceed at this point. He also noted that the membership of the TCBDA needs to be built up. He said he would like to go back and work with the downtown business owners and come forward with something that the community would support. In response to a question from Councilor Scheckla, Mr. Ellenson responded that there might be three positions opening on the board.

Councilor Patton commented that it appears that there is no cohesive group in the central business district at this time. She suggested that the focus be shifted to membership.

There was discussion on the Council and City's role in supporting an upgrade to the downtown area, which has been an ongoing effort for many years. It was noted that there needs to be a more collaborative approach to an upgrade among the City, downtown property and business owners. Perhaps the commuter rail will also help the downtown and provide opportunities for funding.

City Attorney Ramis advised that no Council motion is needed at this point.

Councilor Scheckla questioned the amount of time devoted by the City Staff on this matter. In response, Community Development Director Hendryx noted that this has been a City Council goal that staff has been working on for the last several years. Councilor Patton added that she wanted to make it clear that this matter had been before the City Council for a long period of time. She noted that the City Council knew the staff was providing assistance to the efforts in the downtown.

- > EXECUTIVE SESSION: The Tigard City Council went into Executive Session at 7:00 p.m. to discuss real estate transactions and pending litigation under ORS 192.660(1)(e) and (h).

Executive Session adjourned at 7:20 p.m.

Council Meeting convened at 7:30 p.m.

3. VISITOR'S AGENDA

- Donald Meyers, a Tigard business owner in the downtown area addressed the City Council. He said he supported the TCBDA's efforts. He disagreed with Councilor

Scheckla's suggestion that a fee be charged in the future for a similar effort. Mr. Meyers noted that improvements to the downtown would be of benefit to the entire City. In response to a question from Councilor Scheckla, Mr. Meyers said he thought the Chamber of Commerce should participate in downtown revitalization.

- Carl Johnson, 8965 SW Burnham Street, Tigard, Oregon submitted written comments to the City Council. He advised he objected to the formation of the Economic and Business Improvement Districts. He noted that the goal was admirable with regard to enhancing the downtown. He advised that a good start would probably be with the coming of the light rail. A copy of Mr. Johnson's August 14 letter is on file with the City Recorder.

4. CONSENT AGENDA: Motion by Councilor Scheckla, seconded by Councilor Dirksen to approve the Consent Agenda.

- 4.1 Approve Council Minutes: June 12 and 19, 2001
- 4.2 Receive & File:
 - a. Council Calendar
 - b. Tentative Agenda
- 4.3 Approve Budget Amendment #3 to the Fiscal Year 2001-2002 Budget to Appropriate a State of Oregon Grant in the Amount of \$250,000 for Improvements to Cook Park – Resolution No. 01-51
- 4.4 Authorize the Crime Prevention Officer to Attend the Crime Free Conference 2001
- 4.5 Local Contract Review Board
 - a. Waive Purchasing Rule 70.20(1) and Approve Proposal for the Conceptual Design and Construction of an Architectural Model of the New Library to BML Architects – Resolution No. 01-52

The motion was adopted by a unanimous of City Council present:

Mayor Griffith	-	Yes
Councilor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Patton	-	Yes
Councilor Scheckla	-	Yes

5. CONTINUATION OF QUASI-JUDICIAL PUBLIC HEARING – CONSIDER THE APPEAL OF THE BLUE HERON PARK SUBDIVISION (SUB 2001-00001, PDR 2001-00001, ZON 2001-0002, SLR 2001-00003, VAR 2001-00002)

ITEM ON APPEAL: On June 11, 2001, the Planning Commission denied a request for approval of an 18-lot subdivision on 4.15 acres. The lots are to be developed with attached single-family homes. Lot sizes within the development average just over 3,800 square feet. Development is to be clustered on the west side of the development site, allowing for the preservation and enhancement of the pond, wetland, and stream area on the eastern portion of the property. A sensitive lands review is required for the development due to the presence of steep slopes, a wetland, and a natural drainageway on the site. On June 22, 2001 an appeal was filed regarding the Planning Commission's denial of the project. **LOCATION:** 12450 SW Walnut Street; WCTM 2S103BC, Tax Lot 3900. The project site is located on the south side of SW Walnut Street, opposite of SW 124th Avenue and west of SW 121st Avenue. **ZONE:** R-4.5: Low-Density Residential District. The R-4.5 zoning district is designed to accommodate detached single-family homes with or without accessory residential units at a minimum lot size of 7,500 square feet. Duplexes and attached single-family units are permitted conditionally. Some civic and institutional uses are also permitted conditionally. **REVIEW CRITERIA BEING APPEALED:** Community Development Code Chapter 18.390.

- a. Mayor Griffith continued the public hearing from July 24, 2001.
- b. Declarations or Challenges – The Mayor read the following:
 - Do any members of Council wish to report any ex parte contact or information gained outside the hearing, including any site visits?
 - Have all members familiarized themselves with the application?
 - Are there any challenges from the audience pertaining to the Council's jurisdiction to hear this matter or is there a challenge on the participation of any member of the Council?

Councilor Dirksen advised that he works with Planning Commissioner Glenn Mores and they discussed that the item would be reviewed by the City Council on appeal. Councilor Dirksen advised that his discussion with Commissioner Mores would not prejudice his decision on this item.

Councilor Scheckla noted that he has visited the site and walked along the property.

- c. Staff Report: Community Development Planning Manager Dick Bewersdorff reviewed the staff report, which is on file with the City Recorder. During the staff report, Councilor Scheckla asked who would make determinations regarding tree removal. Mr. Bewersdorff advised that each developer is asked to prepare a plan. Councilor Scheckla cautioned that the developer's plan

might be conservative. Mr. Bewersdorff said that staff reviews and approves tree removal plans.

d. Public Testimony:

Applicant's Presentation

Al Jeck, Urban Development Corporation, 9600 SW Oak Street, Suite 230, Portland, Oregon, 97223, was introduced as the representative for the applicant for the Blue Heron Park proposal. Also introduced were development team members: Matt Sprague, Project Engineer from Alpha Engineering, 9600 SW Oak Street, Suite 230, Portland, Oregon 97223 and Wetlands Biologist Martin Shott, Shott & Associates, 11977 S. Toliver Road, Molalla, Oregon 97038.

Mr. Jeck advised the proposed project meets or exceeds Code requirements. He said he understands the concerns of the neighbors, but did not think the project would adversely affect them. He added that the applicant wants to be responsive to the neighbors' concerns.

Mr. Matt Sprague gave a presentation showing the scope of the project. He described the design of the 18 units and identified wetland areas. Units will be between 1700-2000 square feet, with a 30-foot width. He reviewed the plan to preserve trees. The area is to be landscaped and he pointed out the hammerhead street design. He also noted the location of the pedestrian pathway. Mr. Sprague advised that additional buffers at the site boundaries would exceed what is required for a planned development.

Mr. Sprague reviewed the project issues with a PowerPoint presentation. A copy of this presentation is on file with the City Recorder. Mr. Sprague said the staff report was good.

The PowerPoint presentation outlined the vicinity plan, the existing conditions plan, and the site plan. Project issues were listed, including the following:

- Strong staff recommendation
- Very few issues of concern in staff report
- 3 of 7 Commissioners voted in favor of the development
- No specific criteria were identified for denial
- Project provides many important benefits to the City
- Specific neighborhood concerns

Mr. Sprague's review of benefits were listed as follows:

- Enhancement of degraded wetlands and buffer area
- Innovative water quality and detention facility
- Preservation of large trees and tree canopy
- Design minimizes impact on sensitive natural areas
- Attractive streetscape and entry design
- Enhanced architectural features and construction materials
- Provides utility easement for the City

The tree preservation plans were reviewed. It was noted that this was not just a wetland enhancement but also addressed the riparian corridor and upland species. Mr. Sprague emphasized that 61% of the trees are saved on the developable land. He explained that the density bonus allowed by Code was 1% of every 2% of canopy preserved, up to a maximum of 20%. Mr. Sprague also noted that all developable land on the property is not slated for development (see land type comparisons slides on the PowerPoint presentation).

In response to a question from Councilor Dirksen, Mr. Sprague advised that the trees planted for screening purposes are small, one- to two-year old trees.

Councilor Dirksen referenced the screening issues (privacy) expressed by the neighbors and commented that some buildings will not be screened.

Mr. Sprague, who noted that there was a driveway around a tree island, reviewed streetscape plans. These trees appear to be in good condition.

Mr. Sprague reviewed the architectural features for the building structures. This includes covered front porches with decorative posts and arbors, front gables that break up the building mass, distinctive materials and building treatments. The materials reflect harmony with the natural surroundings. Mr. Sprague noted that a utility easement would be designated to accommodate sewer services to nearby properties. Development Review Engineer Brian Rager confirmed that the easement is needed for future sewer connections.

Mr. Sprague reviewed the neighborhood concerns with regard to:

- Traffic – with the improvements to Walnut Street, there is an additional traffic light at 121st Avenue and Gaarde Street, which will provide for more breaks in traffic for vehicles to enter and exit the site. Councilor Scheckla asked about the possibility of requiring a right-turn only from

the site. Mr. Rager said he would not recommend a right-turn only noting that the predominant movement will be to the east and the volumes would not warrant such a restriction.

It was noted that there would be a sign to the east of the site, warning of the new access at 124th.

- Noise – Mr. Sprague advised that the gate was removed from the plans because of noise concerns. Another noise mitigation proposal was for a “good-neighbor fence” to be built along some of the property; this will also provide additional privacy.
- Parking – There will be a sidewalk on one side of the street. Each home will have two-car garage, with two parking spaces in front, which meets Code requirements.
- Tree Removal – The applicant will retain as many trees as possible. There will be an arborist on site to minimize impacts to trees.
- Pond Maintenance – Maintenance has been addressed by designing a pond that will require little or no maintenance.
- Density Issues – Detailed information was outlined in the PowerPoint presentation. (See Page Nos. 10 and 11 of the presentation on file with the City Recorder).
- Consistency with surrounding development – Mr. Sprague said the proposed development is consistent with surrounding housing types and showed several slides of the variety of existing housing in the area. The price range of the homes in the new development will be between \$180,000 – 220,000.
- Privacy – Mr. Sprague noted that the Code provisions have been met and additional steps have been taken. He said they were preserving as many trees along the boundary as possible. He referred to the increased side-yard setbacks, adding an extra buffer in some locations.

Councilor Patton questioned whether the applicant had considered more fencing than currently proposed. Mr. Sprague said they had discussed fencing, but were unclear as to what issues the neighbors still needed to have addressed.

In response to a question from Mayor Griffith, Mr. Sprague advised that the construction timeline for this project is not known. He noted that this construction season is nearing an end. Mayor Griffith said that, if the proposal is approved and construction took place later in the year, erosion control would be a consideration.

Councilor Dirksen asked Mr. Sprague to show where the Kessler property was located. Mr. Sprague indicated the location on a display map.

In response to a question from Councilor Moore, Mr. Bewersdorff advised that this is a Type II decision. The property could provide for development of 15- to 16-single family units. Mr. Sprague commented that it would not be possible to place the maximum number of single family units on this property because Code requirements could not be met.

Mr. Rager advised that Tualatin Valley Fire & Rescue Department has accepted the proposed plan.

Council Meeting recessed at 8:56 p.m.

Council Meeting reconvened at 9:06 p.m.

Opponents

- Jim Vandehey, 12430 SW Walnut Street, Tigard, OR 97223. Mr. Vandehey submitted his written comments to the City Council. He reviewed the history of this property.

A copy of Mr. Vandehey's written testimony is on file with the City Recorder. His issues included whether or not this property falls under the requirements for a flag lot, livability, and the negative impact to the value of adjacent properties. Mr. Vandehey expressed concerns with additional traffic that would be generated by the development. He stated the increased traffic would be detrimental to livability, property values, and future salability. He reviewed several issues regarding an illegal fill on the property. He objected to small lot sizes and the density transfer allowed by using wetlands, since the wetland area is not buildable. He noted that there were more than 50 considerations that needed to be satisfied on this conditional use application.

Mayor Griffith asked a question with regard to fill. Mr. Rager responded that a soils report was done. The report will be updated as needed and as the property is developed.

- Margie Kessler, 12425 SW Alberta Street, Tigard, Oregon 97223. Ms. Kessler submitted written comments outlining her testimony, which is on file with the City Recorder.

Ms. Kessler also referred to a model constructed to illustrate the scale of the proposed structures and their vicinity to her home. She noted that because her home is situated at a lower point in the landscape, the new construction would be the equivalent to having a three-story structure adjacent to her property. Ms. Kessler also referred to an aerial-view map. She cited that some trees were not listed in the tree inventory.

Ms. Kessler advised that she does not believe the proposed design is compatible with the surrounding property. She questioned the good-neighbor fence and who would be responsible for maintaining it. She noted the need for continuous fencing around this property. Ms. Kessler suggested that the proposal be restricted to 12 units so more trees could be saved. Ms. Kessler noted she was concerned about damage to her trees when others were removed.

Ms. Kessler summarized and said that the proposed application violated the:

- Comprehensive Plan, by diminishing the quality of life of existing neighbors and their privacy.
- residential zoning code (18.510.010), by not protecting the livability of existing neighborhoods.
- Tigard Vision Statement, by not protecting the existing character and livability of an established area and not preserving and protecting aesthetic qualities valued by those who live and work in Tigard.

Copies of the photographs shown by Ms. Kessler during her presentation are on file with the City Recorder.

- Sherry Murphy, 12470 SW Walnut, Tigard, Oregon, 97223. Ms. Murphy expressed concern that fir trees on the property may be damaged. Ms. Murphy testified that her home is the single-story home adjacent to the entrance of the proposed Blue Heron development.

It concerned her that quality and reason had seemed to have taken a "back seat to maximum profit." She said it was not a bad thing for a property owner to profit from the use of his/her property, but profit

should not occur at the expense of causing an irreversible, negative impact to existing residents, fowl, wildlife habitat, forestation, nature, drainage ways.

She expressed concern about the impact of construction traffic on the three Douglas fir trees that are two feet from the property line. She said that Alpha Engineering believes that additional compacting around these trees will help save the trees. However, Ms. Murphy said because fir trees are surface rooted, compacting would be detrimental. She was concerned that the trees may not show damage immediately and questioned what would happen if the damage became evident two years later. She noted that questions on saving trees, additional traffic noise, and sidewalk design for her side of the private street have been ignored.

Ms. Murphy noted that the trees in the median areas are not surrounded by asphalt at this time. These trees have ferns and hostas planted under them.

Ms. Murphy said she purchased her home 12 years ago at this location because of the treed setting. She objected to the loss of her privacy with the two-story structures proposed for this development. She noted a definite need for privacy fencing.

Ms. Murphy advised that the developer's density bonus should be denied because the request is based on restricted wetlands and unbuildable areas. Also reforestation issues should be addressed to safeguard neighbors' property. She said the plan should be modified so that it would fit into the Tigard Vision Statement, which the developer says is not applicable.

The developer should be requested to do an updated street sight-clearance and volume speed traffic study on Walnut Street beginning with the advent of school in September. The developer should be requested to focus not only on profit but also on community character of the existing neighborhoods and the quality of life for those residents. She said the developer could meet Metro's standards for density with 12 units instead of 18. The City is not getting anything of value for additional density while Tigard residents adjacent to the development will end up "paying the price."

The City sewer is currently on Walnut Street and being utilized by neighbors. The pond and drainage is not a public use area and will never be a park setting or useful for any recreation.

- Carla Isaacson, 12520 SW Walnut Street, Tigard, Oregon 97223. Ms. Isaacson also testified with regard to concerns about removal of trees. She was concerned about noise generation that would adversely impact the neighborhood.
- Donna Cameron, 12490 SW Walnut Street, Tigard, Oregon 97223. Ms. Cameron asked the City Council uphold the Tigard Planning Commission's decision to deny the application. She noted that she has a letter on file with the City Council outlining her concerns with the density. Ms. Cameron that she would have three structures next to her property and referred to a site map. She expressed concern about protecting the trees on her property.

In response to a question from Councilor Scheckla, Mr. Bewersdorff noted that the City was meeting density requirements.

- Julie Rau, 12430 SW Walnut Street, Tigard, Oregon, 97223. Ms. Rau submitted her written testimony to the City Council. She referred to the Codes that had been cited in addition to the questionable density and zoning issues. She also noted unanimous opposition from the neighbors. She advised that it did not appear that the applicant was concerned about the impacts to the homeowners. She referred to the gates planned for the development, which she now understands will be removed. However, she said she did not understand why the applicant would have thought the gate would add value to the project.

She noted the close proximity of her home to the entrance/exit to the development and the amount of traffic that would pass by, which would affect the value of her home. She cited concern that the purpose of the project was solely for making as much profit as possible. She advised that the project would not enhance Tigard.

Ms. Rau referred to her objection to the Alpha Engineering proposal with regard to crime prevention and the suggestion/assumption that neighbors would be able to view the property and act as the Neighborhood Watch.

She noted the issues at stake, including loss of privacy, tree removal, and the integrity of the remaining trees, wildlife, wetlands, traffic, safety, and noise pollution. She asked that the City Council realize the negative impact to the established homeowners with nothing in return

from the applicant for the losses. Ms. Rau asked the City Council to deny the application.

- Mark Guz, 4753 NE 62nd Street, Portland, Oregon. Mr. Guz testified that he was a friend and associate of people in the neighborhood. He noted with the development would come pollution from cars and fertilizers, which would impact water quality. He also noted concern about loss of privacy for the neighbors.
- Lee Hartfield, 12500 SW 124th Avenue, Tigard, Oregon 97223. Mr. Hartfield noted he was concerned for the safety of visitors and children. He noted speed issues with traffic on Walnut. He also noted that there was no provision for overflow parking.

Mayor Griffith polled the Council (per Council groundrules) noting the hour of the evening and whether the City Council wished to continue with the meeting. Consensus of Council was to proceed.

- Milt Fyre, 12121 SW Landsdowne, Tigard, Oregon 97223. Mr. Fyre noted his background, which included serving on the NPOs for two years and on the Planning Commission for ten years. He noted that he had lived 34 years in the neighborhood and recommended denial of the application.

Mr. Fyre said the purpose of the Comprehensive Plan was to maintain the quality of life. He referred to the use of wetlands in calculating the density transfer and issues with the property, which included steep slopes, a pond, and soil conditions. He said there was already a significant wetland environment present and the proposed enhancement in return for density transfer should not be considered. He said the proposal represented twice as many homes in this area, which would translate to twice as many vehicle trips. He contended that the development is not consistent with the surrounding area. Mr. Fyre urged the City Council to take a hard look at the trade offered for a sewer easement, which should actually be a condition of approval.

Mr. Fyre said the property should be developed, but not as a Planned Development. He said single-family housing would be more consistent with the area than a Planned Development.

In response to a question to a question from Councilor Scheckla, Mr. Fyre advised that density bonus provisions were initially set up to

preserve open space. He noted that the proposal for density transfer was based on property that could not be built on regardless.

In response to a question from Councilor Patton where she asked Mr. Fyre if he disagreed with the concept of Planned Developments, Mr. Fyre responded that if the City would gain open space, then a density transfer was positive. He said the City does not gain anything in this instance but increased density.

In response to a question from Councilor Scheckla, Mr. Fyre said he had mixed feelings about the issues of trees. He noted that when trees are taken down then the existing trees are subject to windthrow.

Rebuttal

Following are the highlights of Mr. Matt Sprague's rebuttal to the above testimony:

- Mr. Sprague took issue with concerns about whether this was a flag lot. He noted that it had been determined that this property was appropriate for a planned development.
- He noted that the tree preservation being proposed for the number units being proposed is "incredible."
- He noted the developer would work to ensure minimal impact.
- He advised that the City arborist has not mentioned any negatives with regard to the proposal. The Plan had been revised to reflect the suggestions by the City arborist. He advised that the developer would work diligently with the arborist.
- He referred to the canopy and tree preservation calculations that were questioned. Exact calculations will not be known until a survey has been completed. He noted that tree canopy calculations are only for trees greater than 12 inches on the applicant's site.
- He noted the applicant was trying to be responsive to the neighbors from the concerns that were heard at the Planning Commission.
- He said the applicant was willing to provide additional buffering.
- He referred to concerns by Ms. Kessler about trees at the south boundary line. He noted two trees are considered to be diseased.
- He referred to the south boundary and fencing and said this area was used by wildlife and that it would make more sense to fence the backyard.
- He said that fewer units would not mean that fewer trees would need to be removed.
- He noted private outdoor space was provided behind all of the units.
- He expects that parents would take their children to the nearby park.

- He noted that their studies did not indicate that this proposal would adversely impact the value of adjacent properties. The proposal was for “nice, attached single-family clustered” homes.
- He noted that Ms. Kessler was concerned that headlights would reflect into her kitchen window. He said this would not occur.
- He referred to comments about heavy equipment accessing the property and potential damage to the trees; the arborist had not issued concerns about this point.
- He shared with the Council a picture of Ms. Kessler’s home as viewed from the applicant’s site.
- He noted that the applicant is not only preserving sensitive lands but a quarter of the property that is being preserved is considered developable land.
- The applicant is providing open space areas as required by the City.
- He noted that the proposed development would be consistent with the homes that now exist in the area.
- He reviewed screening proposed for two adjacent properties. He referred to concerns to the north for additional screening, fencing and understory plantings.
- He noted that Mr. Fyre stated he had lived in the neighborhood for 34 years, but Mr. Fyre also constructed a development in the area. Alpha Engineering assisted Mr. Fyre with his development.
- He reviewed the benefits that were offered from the site design.

In response to a question from Mayor Griffith, Mr. Sprague advised that the homeowner’s association would maintain the proposed pond, which would require infrequent maintenance.

Mr. Sprague noted that a good-neighbor fence was proposed and described how this six-foot high wooden fence would be constructed.

In response to a question from Mayor Griffith, Mr. Sprague agreed with Ms. Kessler that in an area that she cited, the majority of trees would be removed.

Mr. Sprague noted that there would be a biofiltration area where trees will be planted.

In response to a question from Councilor Patton, Mr. Sprague noted that a reduction of 18 units to 16 would not make much difference to the impact to the property.

In response to a question from Councilor Scheckla with regard to allowing more parking, Mr. Bewersdorff advised that the applicant has met the parking requirements.

Mr. Bewersdorff reviewed the concerns about whether or not the applicant's property is a flag lot. He noted that the Planned Development requirements preclude lot-size requirements.

- e. Staff Recommendation: Staff recommended approval of the proposed application with conditions.
- f. Mayor Griffith closed the Public Hearing.
- h. Council Consideration:

Councilor Scheckla suggested that deliberation be delayed as he would like time to review the issues.

Councilor Patton advised that she had reviewed a large amount of information received previously and she would be comfortable with making a decision at this time. The Council proceeded with consideration.

Councilor Scheckla noted that in walking the property, he now has different ideas about the proposal.

Councilor Dirksen advised that he had looked at this application trying to find justification to reject the proposal based on Code provisions but could not find any such provisions. He noted that he was concerned with privacy issues. He recommended a condition that all of the property line be fenced on the north, west and south sides. He noted that he would like to see larger trees preserved. Councilor Dirksen noted concern about construction activity impacts on existing trees and referred to a recent project in the City where trees were damaged due to construction. He recommended that there be punitive damages imposed if existing trees are not preserved or some sort of bond should be required.

Councilor Moore noted that the applicant has met the provisions of the Code. He referred to the arguments presented about quality of life issues but advised that these types of arguments could be said for any proposed development. He also noted he knew what it was like to lose privacy because of a new development and acknowledged that privacy will be diminished for existing neighbors. He said that if a final decision was issued based on quality of life criteria, the matter would most likely go to the Land Use Board of Appeals,

which would remand the issue to the City. This would only mean that the development would be delayed. He said he supported Councilor Dirksen's recommendations and he also supports reversing the Planning Commission's denial of this development.

In response to a question from Councilor Scheckla whether or not a certified, independent arborist should be used to review the application, City Attorney Ramis noted that they could continue the hearing to bring more evidence in to address this specific idea. Councilor Moore noted that the applicant supplied information from a certified arborist and also the City's arborist has looked at the proposal. Councilor Scheckla expressed concern that the arborist be independent. Councilor Dirksen noted that the City's forester was stricter and had studied the property in an unbiased fashion. Councilor Patton noted that she felt confident with City Forester Matt Stine's recommendations.

Councilor Patton agreed with Councilor Dirksen with regard to scrutinizing the Code to determine if the application was in compliance with all applicable requirements. She advised that she agrees with the staff report. She noted that she sympathizes with the concerns of the neighbors about the loss of privacy. She advised that she would like to see fencing on all units abutting adjacent properties. Councilor Patton also noted concerns with safety with regard to Walnut Street, especially at the entrance/exit of the development. She would like some investigation as to whether any additional traffic mitigation could be set as a condition. She agreed that the Planning Commission's denial should be reversed as the Planned Development proposal meets Code requirements. With regard to the request for the density bonus, she said that the reduction from 18 to 16 units does not appear to make a significant difference to the impacts on the neighbors. Councilor Dirksen noted he agreed with Councilor Patton on this point.

Mr. Rager advised that the traffic study, which was done on May 8, 2000, at 124th and Walnut indicated that there were no traffic safety issues and nothing further would be warranted. He advised that the sight distance to the east was somewhat of a problem (a dip in the road) and the sight distance to the west was acceptable. He also noted that Washington County will be improving Walnut Street in the near future. From the period 1996-98, there were four accidents reported at 124th and Walnut, which is not considered to be excessive.

Councilor Dirksen noted his concern about protecting trees due to careless construction. Councilor Moore commented that some damage done may not show up for several years.

Mr. Bewersdorff reviewed the conditions as discussed by Council:

1. The property is to be fenced behind and next to all dwelling units with the exception of open areas.
2. Tree plantings in all buffer areas should be done with 2-inch caliper trees.
3. The developer should be required to put in an escrow account the value of every 12-inch tree that is to be retained for the period of construction. He noted that in other cases this period has been for seven years. He said the "period of construction" would mean during the construction of the streets and homes.

In response to a question from Councilor Patton with regard to whether trees on adjacent properties could be included, Mr. Bewersdorff advised that conditions could be made specific with regard to certain trees.

The escrow account would contain funds to cover the value of the 12-inch caliper trees as determined by the City forester. The funds would be paid to the City based on the value of trees lost. There is a methodology used to determine the value of the trees and the replacement by caliper inches.

It was noted that the escrow account may be a large sum.

With regard to a question from Councilor Scheckla, City Attorney Ramis noted that Measure 7 is not being enforced at this time, but if ruled to be a valid limitation on local government, Measure 7 will affect all decisions, including this one.

With regard to the traffic condition, Councilor Patton reiterated that she would like to see signage or additional efforts made to warn that caution is needed for the intersection. She noted that this project would add a private drive and a sidewalk to a major collector street. She expressed concern that drivers should be able to anticipate that there may be people crossing the road. Mr. Rager acknowledged that this situation is similar to other intersections although one of the legs happens to be a private street. There is a possibility that the applicant could be required to stripe a crosswalk. After discussion, it was determined that Mr. Rager would review the Manual on Uniform Traffic Control Devices to determine what safety measures could be required (such as striping a crosswalk or signage).

Councilor Moore indicated that these traffic conditions may be temporary solutions because the County planned improvements on Walnut Street within the next 12-18 months. Councilor Patton noted that she did not think this would be a temporary solution for entering and exiting 124th Avenue at this location. Councilor Patton said she would be comfortable in delegating to staff the task of writing the proposed recommendation for Council review.

Councilor Moore noted his concern about the amount of dollars that may be required for the escrow account for the trees. City Attorney Ramis noted that if the amount is not workable, then the applicant could seek an amendment to this condition through a hearing process.

Motion by Councilor Dirksen, seconded by Councilor Moore, to overturn the Planning Commission's denial dependant upon the conditions discussed tonight including additional fencing, increasing requirements of the tree size for new trees, the traffic issue to be reviewed by the City Engineer, and the escrow account for tree damage. The specifics of these conditions are to be defined by staff and then considered by the City Council.

The motion was approved by majority vote (4-1) of City Council present:

Mayor Griffith -	Yes
Councilor Dirksen -	Yes
Councilor Moore -	Yes
Councilor Patton -	Yes
Councilor Scheckla -	No

6. COUNCIL LIAISON REPORTS: None.

7. NON AGENDA ITEMS: None.

> STUDY SESSION

City Manager Monahan reviewed the following information, which was distributed to the City Council:

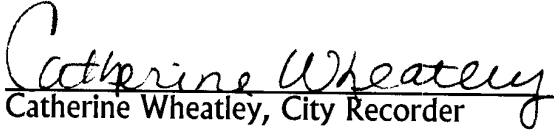
- A loan has been approved for the City of Tigard from the Oregon Economic and Community Development Department for Cook Park Improvements in the amount of \$2,290,248.
- Attorney Ed Sullivan requested a waiver of conflict with regard to giving advice to a homeowners association in the Bull Mountain area. (A copy of Mr. Sullivan's e-mail communication outlining his request is on file with the City Recorder.)

Consensus of the City Council was to grant the waiver with the provision that if the situation develops into litigation against the City, then the waiver would not continue to be acceptable to the City Council. In addition, language would be included in a letter to Mr. Sullivan that his representation of these individuals would be all right at the local level; however, if there is action to be appealed, then the City Council would not be in favor of continuing to approve the waiver.

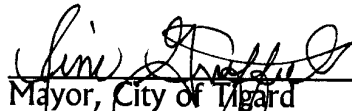
- A joint meeting with the City of Tualatin was tentatively scheduled from 6 – 8 p.m. on September 17, 2001, at the Tualatin City Hall. A tentative agenda topic included a discussion about a bridge over the Tualatin River. Due to some scheduling conflicts, another date will be sought.
- Council received a memorandum (on file with the City Recorder) from Kathy Kaatz of the Public Works Department regarding the Water Conservation Calendar 2002 . Ms. Kaatz, in her memorandum, asked the City Council if they would allow their names and signatures to be included as part of the calendar to acknowledge the cooperative efforts of the teachers who allowed the City to bring its water conservation message and education to the classroom. Council consensus was to give the authorization requested.
- Information pertaining to the August 21, 2001, City Council Agenda Item No. 7, Solid Waste Rate Policy Clarification and Feedback, was placed in the City Council mail packet.
- Mayor Griffith advised he testified at a recent hearing with regard proposed redistricting boundary changes. He requested that Tigard, King City, and Durham remain together in a legislative district. He advised he does not know where the district lines will eventually be drawn.
- Council members and staff should be cognizant about making noise, such as rattling papers, when television cameras are recording the meeting.
- Councilor Scheckla noted concerns about the recent events with "Camp Dignity," which is a camp where individuals are living who are homeless. He said there has been increased presence of homeless persons in the Fanno Creek Park area.

8. EXECUTIVE SESSION: Canceled.

9. ADJOURNMENT: 11:40 p.m.


Catherine Wheatley, City Recorder

Attest:



Mayor, City of Tigard
Date: September 25

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